

Joseph F. Jennings (State Bar No. 145,920)
jjennings@knobbe.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Phone: (949) 760-0404
Facsimile: (949) 760-9502

Phillip A. Bennett (State Bar No. 241,809)
phillip.bennett@knobbe.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
12790 El Camino Real
San Diego, CA 92130
Phone: (858) 707-4000
Facsimile: (858) 707-4001

Attorneys for Plaintiff
KFx Medical Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KFX MEDICAL CORPORATION, a Delaware corporation,	) Case no. 11cv1698 DMS (BLM)
)
Plaintiff and Counterdefendant,	) PLAINTIFF'S NOTICE OF MOTION
	) AND MOTION TO (A) DISMISS
v.	) DEFENDANT'S COUNTERCLAIM
	) FOR INEQUITABLE CONDUCT IN
ARTHREX, INCORPORATED., a Delaware	) CONNECTION WITH U.S. PATENTS
corporation,	) 8,100,942 AND 8,109,969; (B) STRIKE
	) THE CORRESPONDING
Defendant and Counterclaimant.	) AFFIRMATIVE DEFENSE; AND (C)
	) EXTEND TIME TO ANSWER
	) REMAINING COUNTERCLAIM
	) ALLEGATIONS
)
)
	) Date: July 13, 2012
	) Time: 1:30 p.m.
	) Courtroom 10, 2 nd Floor
	) Honorable Dana M. Sabraw

NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 13, 2012 at 1:30 p.m. Plaintiff KFx Medical Corporation (“KFx”), will appear in the above referenced Court, located at 940 Front Street, Courtroom 10, San Diego, CA 92101, and will, and hereby does, move for an order (a) dismissing Defendant’s counterclaim for inequitable conduct in connection with U.S. Patents 8,100,942 and 8,109,969; (b) striking the corresponding affirmative defense; and (c) extending the time for KFx to answer the remaining counterclaim allegations.

MOTION

KFx hereby moves the Court for an order (a) dismissing Defendant’s counterclaim for inequitable conduct in connection with U.S. Patents 8,100,942 and 8,109,969; (b) striking the corresponding affirmative defense; and (c) extending the time for KFx to answer the remaining counterclaim allegations. The motion is made on the grounds that the inequitable conduct counterclaim (and corresponding defense) fail to state a claim for relief and are insufficient as a matter of law. This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Phillip A. Bennett with supporting exhibits, filed concurrently herewith, and the pleadings, as as well as such other oral and/or documentary evidence or argument as may be presented at or before the time of the hearing.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 24, 2012

By: s/Joseph F. Jennings

Joseph F. Jennings
Phillip A. Bennett

Attorneys for Plaintiff
KFx Medical Corporation

PROOF OF SERVICE

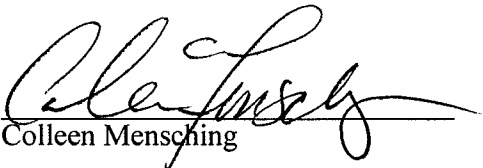
I hereby certify that on May 24, 2012, I caused **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO (A) DISMISS DEFENDANT'S COUNTERCLAIM FOR INEQUITABLE CONDUCT IN CONNECTION WITH U.S. PATENTS 8,100,942 AND 8,109,969; (B) STRIKE THE CORRESPONDING AFFIRMATIVE DEFENSE; AND (C) EXTEND TIME TO ANSWER REMAINING COUNTERCLAIM ALLEGATIONS** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

Michael A. Tomasulo
tomasulom@dicksteinshapiro.com
DICKSTEIN SHAPIRO LLP
2049 Century Park East, Suite 700
Los Angeles, CA 90067
T: 310-772-8300

Charles W. Saber
saberc@dicksteinshapiro.com
Salvatore P. Tamburo
tamburos@dicksteinshapiro.com
Megan S. Woodworth
woodworthm@dicksteinshapiro.com
S. Gregory Herrman
HerrmanG@dicksteinshapiro.com
DICKSTEIN SHAPIRO LLP
1825 Eye Street Northwest
Washington, DC 20006
T: 202-420-2200

I certify and declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the forgoing is true and correct.

Executed on May 24, 2012, at San Diego, California.


Colleen Mensching

KFXL.064L
13219695
050312